



DATE: JANUARY 11, 20001

CASE NOS.: 2000-ERA-0016, 2000-ERA-0017

In the Matter of:

ROBERT K. FOREST,
Complainant,

v.

WILLIAMS POWER CORP., WILLIAMS GROUP INTERNATIONAL, INC., and NORTH
ATLANTIC ENERGY SERVICES CORP.,
Respondents.

Before: PAMELA LAKES WOOD
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINTS**

This matter arises under the employee protection ("whistleblower") provisions of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851, 29 C.F.R. Part 24. The parties are Complainant Robert K. Forest ("Complainant"); Respondents Williams Power Corp. and Williams Power Group International, Inc. (collectively referenced as "Williams"); and Respondent North Atlantic Energy Services Corp. ("North Atlantic.") At the request of the parties, a settlement judge was appointed and, following settlement proceedings presided over by Judge Michael Lesniak, the parties reached a settlement. **See** 29 C.F.R. § 18.9(e). Under cover letter of January 9, 2001, filed on the same date, the parties submitted to the undersigned a Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement; a Settlement Agreement with Appendices ("Settlement Agreement"); and a supporting memorandum of points and authorities. The parties have requested that I enter a Recommended Decision and Order approving the settlement and dismissing the claims.

To the extent that the Settlement Agreement may be deemed to relate to matters under laws other than the ERA, I have limited my review to determining whether the terms

thereof are a fair, adequate and reasonable settlement of Complainant's allegations that the Respondents violated the ERA. **See Poulos v. Ambassador Fuel Oil Co., Inc.**, 1986-CAA-1 (Sec'y Nov. 2, 1987).

In the motion to approve the settlement, the parties request that the terms of the Settlement Agreement remain confidential. In counsel's cover letter (January 9, 2001 correspondence from Daryl M. Shapiro, Esq. of Morgan, Lewis & Bockius), the parties provide notice to the Department of Labor "that they each seek to assert pre-disclosure notification rights under 29 C.F.R. §§ 70.26" and request that they be notified of any Freedom of Information Act (FOIA) request through specified representatives. The parties assert that information in the Settlement Agreement is "'confidential commercial or financial information,' which has never been disclosed to the public" (and therefore covered by Exemption 4) as well as privacy information protected by Exemption 6. In accordance with the request of the parties, the Settlement Agreement (including Appendices) is being maintained in a separate folder, and counsel's correspondence of January 9, 2001 will be associated with the folder. However, as the parties recognize, records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and the Department of Labor must respond any request to inspect and copy the record of this case as provided in the FOIA. As the Administrative Review Board (ARB) has noted: "If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed." **Seater v. Southern California Edison Co.**, 1995-ERA-13 (ARB Mar. 27, 1997).

I note that the Settlement Agreement itself incorporates certain confidentiality provisions binding upon the parties. Having reviewed those provisions, I find that the provisions do not run afoul of the requirements of law. **See generally Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor**, 85 F.3d 89 (2d Cir. 1996); **Bragg v. Houston Lighting & Power Co.**, 1994-ERA-38 (Sec'y June 19, 1995).

The parties have agreed that the following information may be provided to persons not authorized for disclosure of the terms of the Settlement Agreement or to members of the media who make specific inquiries about the status of the disputes, claims, and disagreements between the parties:

1. Mr. Forest, Williams, and North Atlantic have voluntarily reached a confidential settlement of Mr. Forest's claims. The terms of that settlement cannot be publicly disclosed by a party to the Settlement Agreement.
2. The settlement resolves all disputes between Mr. Forest and Williams and North Atlantic.
3. The parties agree that the settlement is a fair, adequate, and reasonable resolution

of Mr. Forest's claims.

4. No party has admitted or conceded any liability or fault arising out of the claims.

Having reviewed the Settlement Agreement, I find that it is a fair, adequate, and reasonable settlement of the complaints in these matters. Accordingly,

IT IS HEREBY RECOMMENDED that the Settlement Agreement be **APPROVED** and that the complaints of Robert K. Forest in case numbers 2000-ERA-0016 and 2000-ERA-0017 be **DISMISSED WITH PREJUDICE**.

PAMELA LAKES WOOD

Administrative Law Judge

Washington, D.C.

NOTICE: In accordance with Departmental regulations, as amended January 30, 1998, this Recommended Decision and Order will automatically become the final order of the Secretary unless a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Copies of the petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210. To be timely filed, a petition for review must be filed **within ten (10) business days** of the date of this Recommended Decision and Order. **See** 29 C.F.R. §§ 24.7, 24.8, 24.9; 63 Fed. Reg. 6614 (February 9, 1998).